

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 229
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 29, 1970

Appearances:

Norman M. Littell, with whom were Harold E. Mott, and Leland O. Graham, Attorneys for Plaintiff.

Walter A. Rochow, with whom was Assistant Attorney General Edwin L. Weisl, Jr., Attorneys for the Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion of the Commission.

In this law suit the Navajo Tribe of Indians is asking the Commission to award it additional compensation under Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050) for the cession of its Indian title lands to the United States under the Treaty of June 1, 1868 (15 Stat. 667). Plaintiff tribe asserts that it held Indian title to some forty million acres of land at the time of the 1868 Treaty and that the United States paid the Navajo tribe an unconscionably low consideration for the cession of these lands. The subject tract is located principally in northeastern Arizona and northwestern New Mexico, and extends northward into southeastern Utah and southwestern Colorado.

American periods of sovereignty. The archaeological evidence was quite extensive, covering twenty-three volumes of site reports dealing with over 1,400 abandoned Indian habitation sites throughout the claimed area with detailed explanations as to the date of occupation and identity of the occupants of each site. It was here that the Commission found a great deal of conflicting testimony among the experts. There was sharp disagreement with respect to dating many of the archaeological sites and the identification of the Indians who inhabited them. As it might be expected, most of the differences involved the peripheral areas of the claimed tract.

The record shows that the Navajos had entered the northeastern part of the claimed area sometime between 1300 A.D. and 1500 A.D., and from there spread out principally to the south and west. From the beginning the Navajos had been an aggressive people living a semi-nomadic life. They never lived in permanent villages as did the Pueblo tribes, but were very mobile and roamed over and utilized a broad area of land for farming, food gathering and hunting. At the time of the Spanish conquest of New Mexico, the Navajos were the first Indian tribe to cause the Spanish authorities any serious trouble. They repeatedly raided the new Spanish settlements and neighboring Pueblo villages. The Spanish practice of capturing and enslaving individual Navajos was another reason for the continued conflict during this period.

During the Spanish period the Navajos acquired the horse. In this way they increased their mobility and came into further conflict with the Spanish settlers. The acquisition of livestock, particularly sheep, during the same period caused the Navajos to utilize even more territory as they extended their residences into new areas that were compatible with their pastoral economy. While the Navajo history throughout both the Spanish and Mexican periods has been one of continual growth in population and land use, their conflict with the Ute Indians to the north prevented any Navajo movement in that direction. The Pueblo tribes and Spanish settlers blocked any significant Navajo inroads to the east, and the Apache tribes to the south were a barrier to any extensive conquest of that area. They, therefore, ranged westward and concentrated in the Canyon de Chelly and the Tunicha, Lukachukai and Carrizon Mountains, an area traditionally considered to form the heart of the Navajo homeland.

With the signing of the Treaty of Guadalupe Hidalgo in 1848, American sovereignty attached to the claimed area. From this point on the United States officials sought through negotiation to end the conflicts between the Navajos and local settlers. When these efforts proved fruitless, the decision was made to relocate all the Navajos to the east at Fort Sumner on the Pecos River in eastern New Mexico. Colonel Kit Carson was charged with the responsibility of carrying out this decision. By April of 1864, Colonel Carson's efforts resulted

in most of the Navajos being interned at Fort Sumner, although a substantial minority were widely scattered and in hiding throughout much of the claimed area.

The situation at Fort Sumner proved to be unsatisfactory to both the Indians and the military authorities. Finally, on June 1, 1868, a United States Indian Peace Commission led by General William T. Sherman consummated a treaty between the Navajo leaders and the United States (15 Stat. 667). Under this treaty, which was ratified July 25, 1868, the Navajo Tribe, in exchange for a reservation containing about three and one-half million acres and for other stated consideration, ceded to the United States its aboriginal rights to any territory outside of this reservation while retaining limited hunting rights to the unoccupied lands contiguous thereto.

Despite the size of the new Navajo Reservation, the daily economic needs of a comparatively large Navajo population, estimated at 12,000 for the 1848-1868 period, required the Navajo to exploit a larger area. Governor Meriwether had reported in 1855 that the Navajos were growing corn, wheat, beans, pumpkins, melons, peaches and wild potatoes with about 5,000 acres under cultivation. He also estimated that they had harvested as high as 60,000 bushels of corn per year and were the owners of 200,000 head of sheep and over 10,000 horses.

Defendant agrees that by the 1860's the Navajos were found in the peripheral areas of the subject tract and even beyond, but maintains that this was a situation caused in large measure by the campaigns

